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RUEHGZ/AMCONSUL GUANGZHOU 0331
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RUEHUL/AMEMBASSY SEOUL 0420
RUEHGH/AMCONSUL SHANGHAI 8435
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RUEHGP/AMEMBASSY SINGAPORE 0249
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C O N F I D E N T I A L SECTION 01 OF 03 SHANGHAI 000151

SIPDIS

STATE FOR EAP/CM, DAS DAVIES
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TREASURY FOR OASIA/INA -- DOHNER/HAARSAGER/WINSHIP
TREASURY FOR IMFP -- SOBEL/CUSHMAN
USDOC FOR ITA DAS KASOFF, MELCHER, MAC/OCEA
NSC FOR LOI, SHRIER
STATE PASS CEA FOR BLOCK
STATE PASS USTR FOR STRATFORD/WINTER/MCCARTIN/KATZ/MAIN
STATE PASS CFTC FOR OIA/GORLICK

E.O. 12958: DECL: 4/3/2034
TAGS: [CH](#) [EFIN](#) [KJUS](#) [PGOV](#) [PINR](#) [ECON](#)
SUBJECT: (C) SHANGHAI LAWYER SUING FOR ECONOMIC STIMULUS
TRANSPARENCY

CLASSIFIED BY: Christopher Beede, Pol/Econ Section Chief, U.S.
Consulate, Shanghai, U.S. Department of State.
REASON: 1.4 (e)

11. (C) Summary. Shanghai-based lawyer Yan Yiming on March 20 described his requests for increased government transparency on the RMB 4 trillion stimulus package announced last fall. Yan is pushing the Central Government to allow National People's Congress (NPC) delegates more time to deliberate on the national budget; he also wants details on the projects to be funded under the stimulus. The Central Government was largely unresponsive to his applications, said Yan, but he plans to adjust at least one request and submit it again next year. Yan said that he does not coordinate his legal challenges with other lawyers. End summary.

12. (C) Bio note: Yan Yiming first came to prominence co-founding the AllBright law firm in Shanghai, which bills itself as Shanghai's largest private law firm. His career has led him to be both criminal defense attorney for Shanghai real estate tycoon Zhou Zhengyi--once one of China's richest people, but jailed for corruption in the early 2000's--and to sue large companies pro bono on behalf of indigent plaintiffs, including in cases of industrial pollution and fraud against minority shareholders. Yan was named an opinion leader for Asia by BusinessWeek magazine in 2002. He currently practices in a self-named law firm, also in Shanghai. End bio note.

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Testing the Open Information Regulations
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13. (C) Shanghai-based lawyer Yan Yiming on March 20 provided PolOff and EconOff with an update on his requests for government transparency on the RMB 4 trillion (approximately US\$586 billion) stimulus package. Following the May 1, 2008, entry into force of the Central Government's Open Government Information (OGI) Regulation, Yan initially contemplated

applying the OGI to press for greater budgetary transparency. However, when the Central Government announced plans for a large economic stimulus in October, he decided it represented an even better opportunity. He thus conceived two requests for government information:

- For the Ministry of Finance (MOF), a request that the 2008 budget and the proposed 2009 budget be provided to NPC delegates two weeks in advance of the annual March plenary meeting of the NPC. "If delegates are only given the budget at the last minute, they cannot 'deliberate and approve' (shenpi) the budget, they can only 'approve' (pizhun) it," said Yan. In addition, Yan asked for budgetary details of the stimulus package.

- For the National Development and Reform Commission (NDRC), a three-part request: 1) A list of the projects originally proposed by the provinces, municipalities, companies, and others. 2) A list of the projects approved by the NDRC, along with the justification. 3) Details of the NDRC's oversight plan for monitoring the subsequent stimulus package expenditures.

¶4. (C) Without proper oversight, the stimulus program is ripe for corruption, said Yan. Government officials think that taxes are their money to spend as they wish, said Yan, when actually it is "the people's money entrusted to the officials." Yan cited as particularly egregious the stories that hotels surrounding the NDRC were booked full as soon as plans for an economic stimulus program were announced, suggesting that local officials were flocking to Beijing to "follow the money."

¶5. (C) To his knowledge, said Yan, government bureaus are

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putting in place offices that can comply with the Open Government Information Regulation. For instance, he noted that when he made his application to the NDRC, he was directed to a person at the designated office to turn in the paperwork. This person at first would not accept the application, but Yan prevailed after speaking with a manager of the office. In addition, Yan said some media reporters accompanied him, which he believes helped his cause. (Note: According to press reports, Yan submitted the applications on January 7, 2009. End note.)

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Appealing the Government's Rejection
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¶6. (C) Yan said MOF rejected his application on grounds that the budget could not be unveiled before it was approved by the NPC. He then appealed to MOF for administrative reconsideration, as prescribed in the Open Government Information Regulation. (Note: According to press reports, Yan submitted his appeal on February 9. End note.) Because MOF did not reply to the administrative appeal, Yan's next step would have been to sue MOF in court, but he decided not to--his original request was to provide the budgetary information prior to the 2009 NPC, and any court decision would be made long after the NPC ended, said Yan.

¶7. (C) The NDRC also rejected his application, said Yan, justifying this in part by saying that the request touched on third-party information--that is, the requests made by lower-level governments and companies for stimulus funding. Yan said that he also appealed for administrative reconsideration by the NDRC. (Note: Yan made his appeal on March 3, according to press reports. End note.) Yan believes that NDRC will not respond to the appeal, however, and will instead cite the limited economic stimulus details posted on the NDRC website as fulfilling his request. (Note: The NDRC's website indicates the details were posted on March 6. End note.)

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Planning to Try Again Next Year
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18. (C) Yan said that he will submit his request to MOF for increased budgetary openness again the coming year. The next time, however, he will alter his application to request that MOF provide budget details to NPC delegates two weeks in advance of the Congress every year. In that way, even if MOF is unresponsive or rejects the application prior to next year's Congress, Yan can sue MOF in court with the expectation that, should the courts decide in his favor, any remedy will apply to following years.

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Acting on His Own, But With Like-Minded Supporters

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19. (C) Yan said that other lawyers are attempting to use the Open Government Information Regulation in a similar way, but that he is not actively coordinating with them. He said that his previous work testing environmental regulations in court to gain damage settlements for pollution victims developed in a similar manner: he was the first to take such cases to court and win, demonstrating how to use the legal system to these ends. Subsequently, several other lawyers initiated public interest environmental suits. Yan said he does not meet or communicate with others pressing for governmental budget transparency because of the sensitivity of people working in groups on politically related issues.

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10. (C) Yan commented that, to his knowledge, there was not a particular faction in the State Council that supported passage of the Open Government Information Regulation. Rather, it was part of broader anticorruption efforts, and passed because no officials wished to be seen as opposing increased transparency. However, Yan thought that Central Government officials were surprised that the regulations were being tested so soon by himself and others. (Note: Yan may know of officials who supported the regulation, but most likely would be reluctant to reveal this in an initial meeting with CongenOfs. End note.)

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Comment

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11. (C) Yan, as a self-described adherent of the "uphold [the people's] rights" (wei quan) movement, is an intellectual leader on legal rights in China. He speaks with a clear commitment to rule of law. However, he also appears realistic about how much progress can be made--Yan said that he did not bring rights cases against officials in Shanghai, since Shanghai was relatively advanced, but also because if he initiated local cases, then local officials might be inclined to revoke his law license.

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